

REMARKS

Claims 1-15 are currently pending in this application. Claims 14 and 15 have been amended. No new matter has been added by these amendments. Applicant has carefully reviewed the Office Action and respectfully requests reconsideration of the claims in view of the remarks presented below.

Double Patenting

Claims 14 and 15 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 9 and 10 of copending application serial no. 10/728,459.

Applicant herein submits a Terminal Disclaimer disclaiming the terminal part of the statutory term of any patent granted on the present application, which would extend beyond the expiration date of the full statutory term of any patent issuing from copending application serial no. 10/728,459.

Claims 1, 2, 7-11, 14 and 15 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 4 and 7-12 of copending application serial no. 10/728,500.

Applicant herein submits a Terminal Disclaimer disclaiming the terminal part of the statutory term of any patent granted on the present application, which would extend beyond the expiration date of the full statutory term of any patent issuing from copending application serial no. 10/728,500.

In view of the Terminal Disclaimer and the further remarks presented below, it is respectfully submitted that claims 1, 2, 7-11, 14 and 15 are in condition for allowance.

Claim Rejections Under 35 U.S.C. §102

Claims 14 and 15 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,477,415 (Yerich). Claims 14 and 15 were also rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,731,980 (Moucharwar).

Independent claim 14 has been amended to recite an atrial rate determination unit programmed to determine an atrial rate using bipolar sensing outside the refractory periods and using combined unipolar/bipolar sensing within the refractory periods. Independent claim 15 has been amended to recite means programmed to determine an atrial rate using bipolar sensing outside the refractory periods and using combined unipolar/bipolar sensing within the refractory periods.

Applicant submits that both Yerich and Moucharwar fail to disclose the combinations of elements and features recited in independent claims 14 and 15, including an element programmed to determine an atrial rate using bipolar sensing outside the refractory periods and using combined unipolar/bipolar sensing within the refractory periods. Accordingly, Applicant requests reconsideration of the §102 rejections of these claims.

Allowable Subject Matter

Claims 3-6, 12 and 13 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims.

In view of the Terminal Disclaimers and remarks presented above with respect to the rejections of independent claim 1, Applicant believes claims 3-6, 12 and 13 are allowable without amendment. Applicant, however, reserves the right to amend these claims at a later time.

Claims 1-13 were indicated as allowable if the double patenting rejections were overcome. In view of the Terminal Disclaimers filed herewith, claims 1-13 are believed to be in condition for allowance.

CONCLUSION

Applicant has made an earnest and bona fide effort to clarify the issues before the Examiner and to place this case in condition for allowance. Therefore, allowance of Applicant's claims 1-15 is believed to be in order.

Respectfully submitted,

24 Jun 2006
Date

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